

Issues: Qualification – Separation from State (Layoff), and Compensation (Involuntary Demotion); Ruling Date: May 22, 2013; Ruling No. 2013-3590; Agency: Department of Juvenile Justice; Outcome: Not Qualified.



COMMONWEALTH of VIRGINIA
Department of Human Resource Management
Office of Employment Dispute Resolution

QUALIFICATION RULING

In the matter of the Department of Juvenile Justice
Ruling Number 2013-3590
May 22, 2013

The grievant has requested a ruling from the Office of Employment Dispute Resolution (“EDR”) on whether his March 11, 2013 grievance with the Department of Juvenile Justice (the “agency”) qualifies for a hearing. For the reasons discussed below, this grievance does not qualify for a hearing.

FACTS

On February 13, 2013, the grievant received a “Notice of Layoff or Placement” form from the agency, notifying him that his position as a Security Manager II was scheduled for abolishment. On the form, the grievant had the option to either accept a position with a reduced salary or be placed on leave without pay-layoff. The grievant accepted the placement and signed the Notice of Layoff or Placement form on February 13, 2013. The agency did not provide the grievant with Interagency Placement Screening Forms (“Yellow Forms”), given to employees who will be impacted by layoff to secure preferential consideration for positions with outside agencies for which they are minimally qualified, when he accepted the placement. Subsequently, the grievant learned that two other employees, both of whom had been Security Managers IIs and whose positions were also scheduled for abolishment, had allegedly received placements with a greater work title, role, and/or salary than the grievant’s placement. Both of these employees had less continuous salaried state service than the grievant.

The grievant filed a grievance on March 11, 2013, asserting that the agency had misapplied state policy because it placed two employees with less state service in higher-level positions than the grievant, and because the agency did not give him Yellow Forms for preferential hiring with outside agencies.

DISCUSSION

By statute and under the grievance procedure, complaints relating solely to issues such as the methods, means, and personnel by which work activities are to be carried out, as well as layoff, hiring, promotion, transfer, assignment, and retention of employees within the agency “shall not proceed to a hearing” unless there is sufficient evidence of discrimination, retaliation, unwarranted discipline, or a misapplication or unfair application of policy.¹ For an allegation of

¹ Va. Code § 2.2-3004(C); see *Grievance Procedure Manual* § 4.1.

misapplication of policy or unfair application of policy to qualify for a hearing, there must be facts that raise a sufficient question as to whether management violated a mandatory policy provision, or whether the challenged action, in its totality, was so unfair as to amount to a disregard of the intent of the applicable policy.

The intent of Department of Human Resource Management (“DHRM”) Policy 1.30 (the “Layoff Policy”) is to allow “agencies to implement reductions in the work force according to uniform criteria when it becomes necessary to reduce the number of employees or to reconfigure the work force....”² The Layoff Policy mandates that each agency identify employees for layoff in a manner consistent with business needs and the policy’s provisions, including provisions governing placement opportunities within an agency prior to layoff.³ During the time between Initial Notice and Final Notice of Layoff, the agency shall attempt to identify internal placement options for its employees.⁴ After an agency identifies all employees eligible for placement, the agency must attempt to place them “by seniority to any valid vacancies agency-wide in the current or a lower Pay Band.”⁵ The placement must be “in the highest position available for which the employee is *minimally qualified* at the same or lower level in the same or lower Pay Band, regardless of work hours or shift.”⁶

One of the two employees referenced in the grievance received a placement in the same pay band as the grievant’s placement, but required him to relocate. That position had a work title and role that the grievant argues are greater than his placement. Since the grievant filed his grievance, however, another position within the agency became available. As the senior qualified employee, the grievant was offered, and accepted, this placement. Its compensation level, work title, and role are greater than that of the grievant’s initial placement and the position that would have required relocation. Because his current placement exceeds the work title, role, and salary of the position that would have required relocation, any alleged misapplication or unfair application of policy as to that placement is now moot and need not be further addressed in this ruling.

The Layoff Policy states that each agency is responsible for “identify[ing] employees for layoff in a manner consistent with their business needs and the provisions of this policy.”⁷ In this case, EDR cannot conclude that the agency’s placement decisions were inconsistent the policy or its business requirements. Prior to the agency’s restructuring, the other employee referenced in the grievance worked in a treatment program at a facility for juveniles with “developmental disabilities and severe behavioral disorders.” The grievant and this employee were both Security Manager IIs, but the grievant was the senior employee. The agency closed the facility and relocated the program as part of its restructuring plan. Based on the unique needs of the program, the staff’s familiarity with the program’s participants, and their treatment requirements, the agency head moved the program without changes in staff. As a result, the agency transferred the other employee to the new location in the same position he had occupied previously, despite the grievant’s seniority.

² DHRM Policy 1.30, *Layoff*.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* (emphasis in original).

⁷ *Id.*

In determining how best to implement the Layoff Policy, management has significant discretion to ensure that reorganization is carried out consistent with the policy as well as its business needs. EDR cannot second-guess management's decisions regarding the application of policy absent evidence that the agency's actions are plainly inconsistent with specific policy provisions or other similar decisions within the agency, or are otherwise arbitrary or capricious.⁸ In this case, agency management evaluated the atypical treatment environment in the treatment program and determined that its staff should be relocated without opening any of the program's positions to placement through the Layoff Policy. The "special needs of this population and the uniqueness of the [] program" led management to conclude that transferring current staff along with the program would minimize disruption to its participants. Given the totality of the circumstances, the agency's decision to merely relocate the program's staff without opening their positions to placement is consistent with the both the terms of the Layoff Policy and the agency's business needs. Because this position was not open to placement, therefore, the agency did not misapply or unfairly apply policy by not offering it to the grievant, and the grievance does not qualify for hearing on this basis.

The grievant further argues that the agency violated the Layoff Policy by not providing him with Yellow Forms for preferential hiring with outside agencies when he was offered a placement within the agency. The Layoff Policy states that Yellow Forms should be provided to employees "when they are notified that they will be *affected by* layoff."⁹ Although the grievant was not scheduled to be placed on leave without pay-layoff, he has been affected by the agency's restructuring because he accepted a placement with a lesser work title, role, and salary than his previous position. It would appear consistent with the Layoff policy for agencies to give Yellow Forms to employees who accept placements resulting in a loss of salary, as the grievant did in this case. Accordingly, EDR concludes that the grievant should have received Yellow Forms at the time he was notified of his placement option (i.e., when he was notified that he would be affected by layoff). Since the filing of this grievance, however, and in response to the grievant's concerns about this issue, the agency has provided any employee who accepted a placement resulting in a loss of pay, including the grievant, with Yellow Forms for preferential hiring. While it appears that the agency did not initially follow the terms of the Layoff Policy regarding the distribution of Yellow Forms, it has now modified its position and provided the relief requested by the grievant. As a result, EDR will take no further action on this issue and the grievance is not qualified for a hearing on this basis.

EDR's qualification rulings are final and nonappealable.¹⁰



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⁸ See, e.g. EDR Ruling No. 2009-2090.

⁹ DHRM Policy 1.30, *Layoff* (emphasis added).

¹⁰ Va. Code § 2.2-1202.1(5).